

ORACLE®



***PRESENTATION  
FOR  
ACQUISITION ADVISORY PANEL  
SERVICES CONTRACTS  
JULY 27, 2005***

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# ***ORACLE OVERVIEW***

- **\$11.799 billion (Total revenues/FY05)**
- **Software Business**
  - Oracle Database, middleware & applications
  - Software license updates
- **Services Business**
  - Consulting: Design, implementation, deployment, upgrade and migration services for Oracle's software
  - Staff augmentation
  - Product support services
  - Education (Oracle University)



# ***ORACLE OVERVIEW***

- **50,000 Employees Worldwide**
- **260,000+ Total Customers**
  - **Businesses of many sizes & industries**
  - **Federal, state & local governmental entities**
  - **Educational institutions**
  - **Resellers**

# ***ORACLE INDUSTRIES***

- Aerospace & Defense
- Automotive
- Communications
- Consumer Products
- Chemicals
- Education & Research
- Engineering & Construction
- Financial Services
- Healthcare
- High Technology
- Industrial Manufacturing
- Life Sciences
- Media & Entertainment
- Natural Resources
- Oil & Gas
- Professional Services
- Public Sector
- Retail
- Travel & Transportation
- Utilities

# ***COMMERCIAL PRACTICES***

- **Overview of Commercial Practices**
- **Comparison of Government and Standard Commercial Terms**
- **Recommendations**

# ***COMMERCIAL PRACTICES***

- **Consulting Services: Time & Material Contracts**
  - **Primary business model**
  - **Contract for services**
  - **Includes description of services**
  - **Labor categories for consultants with fixed hourly rates. For example:**
    - **Practice Director**
    - **Technical Director**
    - **Senior Principal**
    - **Associate**
  - **May specify use of offshore resources**



# ***COMMERCIAL PRACTICES***

- **Consulting Services: Time & Material Contracts**
  - **Estimated fee**
  - **No submission of cost data**
  - **Estimated completion date and, for complex engagements, there may be an estimated timeline for completion of stages of the project (e.g., design phase, build phase, test phase, and go-live date)**

# ***COMMERCIAL PRACTICES***

- **Consulting Services: Time & Material Contracts**
  - **Services provided on a T&M basis and payment is for actual time performing services plus materials and expenses**
  - **Payment is not based on acceptance of a deliverable or completion date**
  - **Shared risk provisions negotiated in some contracts; for example, larger, more complex engagements**

# ***COMMERCIAL PRACTICES***

- **Consulting Services: Time & Material Contracts**
  - **Data Rights**
    - **Oracle retains ownership and all intellectual property rights to anything developed or delivered under the agreement**
    - **Customer receives a non-exclusive, non-assignable royalty free license to use anything developed and delivered by Oracle for its internal business operations only**

***COMPARISON  
OF  
GOVERNMENT AND  
STANDARD COMMERCIAL  
CONTRACT TERMS***

# ***WARRANTY***

## **GOVERNMENT**

- FAR 52.212-4(o): “[I]tems delivered ... are merchantable and fit for use for the particular purpose described in this contract”
- See also FAR 12.404(a)
- FAR 12.404(b)(2): states that it “may” be customary to exclude implied warranties

## **COMMERCIAL**

- Services will be provided in a professional manner consistent with industry standards
- Warranty is exclusive
- No other express or implied warranties or conditions, including warranties or conditions of merchantability and fitness for a particular purpose
- Warranty period: 90 days after performance of the services

# ***REMEDY FOR BREACH OF WARRANTY & LIMITATION OF LIABILITY***

## **GOVERNMENT**

- FAR 52.212-4(a): “Re-performance of nonconforming services at no increase in contract price”
- FAR 52.212-4(m), Termination for cause: “Contractor shall be liable to the Government for any and all rights and remedies provided by law.”
- FAR 12.403(c)(2): “Government’s preferred remedy ... excess procurement costs” and “incidental or consequential damages incurred” due to termination

## **COMMERCIAL**

- Exclusive Remedy
- Re-performance of deficient services
- If breach cannot be corrected in a commercially reasonable manner, customer may recover fees paid for the deficient services
- Maximum liability: total fees paid
- No excess procurement costs
- No indirect, incidental, special, punitive or consequential damages

# ***AUDIT RIGHTS***

## **GOVERNMENT**

- FAR 52.212-5 (d) and 52.215-2
- 3 years after final payment

## **COMMERCIAL**

- In limited circumstances (for example, engagement with a significant fee estimate)
- Contract may provide for supporting documentation (e.g., time sheets) for a specific invoice pursuant to a written request
- Short time limit -- for example, 4 months from the date of the applicable invoice

# ***PREPAYMENT***

## **GOVERNMENT**

- No advance payment
- Payment may not be more than the value of the service already provided (31 U.S.C. 3324)
- Payment for services rendered and accepted (FAR 52.232-1)

## **COMMERCIAL**

- For software support services, payment yearly in advance
- Commercial business practice & financial systems modified for Government to provide for payment in arrears



# ***MOST FAVORED CUSTOMER CLAUSES***

## **GOVERNMENT**

- **GSA Schedule – Price Reduction Clause and tracking customer**

## **COMMERCIAL**

- **No most favored customer clause**

# ***RECOMMENDATIONS***

- **Time & Materials Contracts**
  - **Expand definition of Commercial Items to clearly include T&M contracts for consulting services**
  - **Eliminate restriction that T&M can only be used if there is a determination and finding that no other contract type is suitable**
  - **Expand FAR Part 12 to include specific subparts to address commercial services and T&M consulting services**
- **Express statutory authority for prepayment of software support services**
- **Reduce time period for audit of T&M invoices to a commercially reasonable time of 6 months**

# ***RECOMMENDATIONS***

- **Expressly adopt commercial remedies, the exclusion of implied warranties, and limitations on damages (i.e., no excess procurement costs and no consequential damages)**
- **Adopt commercial data rights terms for consulting services (see FAR 12.212 which provides that Government's rights in commercial software shall be defined by commercial license terms)**
- **Promote competition and eliminate Price Reductions clause**

A large, stylized graphic of the letters 'Q' and 'A' in a dark grey, serif font. A large, vibrant red ampersand is positioned between the 'Q' and 'A', partially overlapping them. The text 'QUESTIONS' and 'ANSWERS' is written in a white, bold, sans-serif font, centered over the ampersand and the 'Q' and 'A' respectively.

# QUESTIONS ANSWERS

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